

103D CONGRESS  
1ST SESSION

# S. 248

To establish constitutional procedures for the imposition of the death penalty  
for terrorist murders.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 5), 1993

Mr. SPECTER introduced the following bill; which was read twice and referred  
to the Committee on the Judiciary

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## A BILL

To establish constitutional procedures for the imposition of  
the death penalty for terrorist murders.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Terrorist Death Pen-  
5       alty Act of 1993”.

6       **SEC. 2. DEATH PENALTY FOR TERRORIST ACTS.**

7       (a) OFFENSE.—Paragraph (1) of subsection 2331(a)  
8       of title 18 of the United States Code is amended to read  
9       as follows:

1           “(1)(A) if the killing is a first degree murder  
2           as defined in section 1111(a) of this title, be pun-  
3           ished by death or imprisonment for any term of  
4           years or for life, or be fined under this title, or both;  
5           and

6           “(B) if the killing is a murder other than a first  
7           degree murder as defined in section 1111(a) of this  
8           title, be fined under this title or imprisoned for any  
9           term of years or for life, or both so fined and so im-  
10          prisoned;”.

11          (b) DEATH PENALTY.—Section 2331 of title 18,  
12          United States Code, is amended by adding at the end  
13          thereof the following:

14          “(f) DEATH PENALTY.—

15                 “(1) SENTENCE OF DEATH.—A defendant who  
16                 has been found guilty of an offense under subsection  
17                 (a)(1)(A), if the defendant, as determined beyond a  
18                 reasonable doubt at a hearing under paragraph (3)  
19                 either—

20                         “(A) intentionally killed the victim;

21                         “(B) intentionally participated in an act,  
22                         contemplating that the life of a person would be  
23                         taken or intending that lethal force would be  
24                         used in connection with a person, other than

1           one of the participants in the offense, and the  
2           victim died as a direct result of the act; or

3           “(C) acting with reckless disregard for  
4           human life, engaged or substantially partici-  
5           pated in conduct which the defendant knew  
6           would create a grave risk of death to another  
7           person or persons and death resulted from such  
8           conduct,

9 shall be sentenced to death if, after consideration of the  
10 factors set forth in paragraph (2) in the course of a hear-  
11 ing held under paragraph (3), it is determined that impo-  
12 sition of a sentence of death is justified, except that no  
13 person may be sentenced to death who was less than 18  
14 years of age at the time of the offense.

15           “(2) FACTORS TO BE CONSIDERED IN DETER-  
16           MINING WHETHER A SENTENCE OF DEATH IS JUSTI-  
17           FIED.—

18           “(A) MITIGATING FACTORS.—In determin-  
19           ing whether a sentence of death is justified for  
20           any offense, the jury, or if there is no jury, the  
21           court, shall consider each of the following miti-  
22           gating factors and determine which, if any,  
23           exist:

24           “(i) MENTAL CAPACITY.—The defend-  
25           ant’s mental capacity to appreciate the

1 wrongfulness of the defendant's conduct or  
2 to conform the defendant's conduct to the  
3 requirements of law was significantly im-  
4 paired, regardless of whether the capacity  
5 was so impaired as to constitute a defense  
6 to the charge.

7 “(ii) DURESS.—The defendant was  
8 under unusual and substantial duress, re-  
9 gardless of whether the duress was of such  
10 a degree as to constitute a defense to the  
11 charge.

12 “(iii) PARTICIPATION IN OFFENSE  
13 MINOR.—The defendant is punishable as a  
14 principal (as defined in section 2 of title 18  
15 of the United States Code) in the offense,  
16 which was committed by another, but the  
17 defendant's participation was relatively  
18 minor, regardless of whether the participa-  
19 tion was so minor as to constitute a de-  
20 fense to the charge.

21 The jury, or if there is no jury, the court, shall  
22 consider whether any other aspect of the de-  
23 fendant's character or record or any other cir-  
24 cumstances of the offense that the defendant  
25 may proffer as a mitigating factor exists.

1           “(B) AGGRAVATING FACTORS FOR HOMI-  
2           CIDE.—In determining whether a sentence of  
3           death is justified for an offense described in  
4           paragraph (1), the jury, or if there is no jury,  
5           the court, shall consider each of the following  
6           aggravating factors and determine which, if  
7           any, exist:

8                   “(i) DEATH OCCURRED DURING COM-  
9                   MISSION OF ANOTHER CRIME.—The death  
10                  occurred during the commission or at-  
11                  tempted commission of, or during the im-  
12                  mediate flight from the commission of, an  
13                  offense under section 751 (prisoners in  
14                  custody of institution or officer), section  
15                  794 (gathering or delivering defense infor-  
16                  mation to aid foreign government), section  
17                  844(d) (transportation of explosives in  
18                  interstate commerce for certain purposes),  
19                  section 844(f) (destruction of Government  
20                  property by explosives), section 1201 (kid-  
21                  napping), or section 2381 (treason) of this  
22                  title, section 1826 of title 28 (persons in  
23                  custody as recalcitrant witnesses or hos-  
24                  pitalized following a finding of not guilty  
25                  only by reason of insanity), or section 902

1 (i) or (n) of the Federal Aviation Act of  
2 1958, as amended (49 U.S.C. 1472 (i) or  
3 (n) (aircraft piracy)).

4 “(ii) INVOLVEMENT OF FIREARM OR  
5 PREVIOUS CONVICTION OF VIOLENT FEL-  
6 ONY INVOLVING FIREARM.—The defend-  
7 ant—

8 “(I) during and in relation to the  
9 commission of the offense or in escap-  
10 ing apprehension used or possessed a  
11 firearm as defined in section 921 of  
12 this title; or

13 “(II) has previously been con-  
14 victed of a Federal or State offense  
15 punishable by a term of imprisonment  
16 of more than one year, involving the  
17 use or attempted or threatened use of  
18 a firearm, as defined in section 921 of  
19 this title, against another person.

20 “(iii) PREVIOUS CONVICTION OF OF-  
21 FENSE FOR WHICH A SENTENCE OF DEATH  
22 OR LIFE IMPRISONMENT WAS AUTHOR-  
23 IZED.—The defendant has previously been  
24 convicted of another Federal or State of-  
25 fense resulting in the death of a person,

1 for which a sentence of life imprisonment  
2 or death was authorized by statute.

3 “(iv) PREVIOUS CONVICTION OF  
4 OTHER SERIOUS OFFENSES.—The defend-  
5 ant has previously been convicted of 2 or  
6 more Federal or State offenses, each pun-  
7 ishable by a term of imprisonment of more  
8 than one year, committed on different oc-  
9 casions, involving the importation, manu-  
10 facture, or distribution of a controlled sub-  
11 stance (as defined in section 102 of the  
12 Controlled Substances Act (21 U.S.C.  
13 802)) or the infliction of, or attempted in-  
14 fliction of, serious bodily injury or death  
15 upon another person.

16 “(v) GRAVE RISK OF DEATH TO ADDI-  
17 TIONAL PERSONS.—The defendant, in the  
18 commission of the offense or in escaping  
19 apprehension, knowingly created a grave  
20 risk of death to one or more persons in ad-  
21 dition to the victim of the offense.

22 “(vi) HEINOUS, CRUEL, OR DEPRAVED  
23 MANNER OF COMMISSION.—The defendant  
24 committed the offense in an especially hei-  
25 nous, cruel, or depraved manner in that it

involved torture or serious physical abuse to the victim.

“(vii) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

“(viii) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

“(ix) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

“(x) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

“(xi) TYPE OF VICTIM.—The defendant committed the offense against—

“(I) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if



1           there is no Vice President, the officer  
2           next in order of succession to the of-  
3           fice of the President of the United  
4           States, or any person who is acting as  
5           President under the Constitution and  
6           laws of the United States;

7           “(II) a chief of state, head of  
8           government, or the political equiva-  
9           lent, of a foreign nation;

10          “(III) a foreign official listed in  
11          section 1116(b)(3)(A) of this title, if  
12          that official is in the United States on  
13          official business; or

14          “(IV) a public servant who is a  
15          Federal judge, a Federal law enforce-  
16          ment officer, an employee (including a  
17          volunteer or contract employee) of a  
18          Federal prison, or an official of the  
19          Federal Bureau of Prisons—

20               “(aa) while such public serv-  
21               ant is engaged in the perform-  
22               ance of the public servant’s offi-  
23               cial duties;

1                   “(bb) because of the per-  
2                   formance of such public servant’s  
3                   official duties; or

4                   “(cc) because of such public  
5                   servant’s status as a public serv-  
6                   ant.

7                   For purposes of this clause, the terms  
8                   ‘President-elect’ and ‘Vice President-elect’  
9                   mean such persons as are the apparent  
10                  successful candidates for the offices of  
11                  President and Vice President, respectively,  
12                  as ascertained from the results of the gen-  
13                  eral elections held to determine the electors  
14                  of President and Vice President in accord-  
15                  ance with title 3, United States Code, sec-  
16                  tions 1 and 2; a ‘Federal law enforcement  
17                  officer’ is a public servant authorized by  
18                  law or by a government agency or Con-  
19                  gress to conduct or engage in the preven-  
20                  tion, investigation, or prosecution of an of-  
21                  fense; ‘Federal prison’ means a Federal  
22                  correctional, detention, or penal facility,  
23                  Federal community treatment center, or  
24                  Federal halfway house, or any such prison  
25                  operated under contract with the Federal

1 Government; and ‘Federal judge’ means  
 2 any judicial officer of the United States,  
 3 and includes a justice of the Supreme  
 4 Court and a magistrate.

5 The jury, or if there is no jury, the court,  
 6 may consider whether any other aggravat-  
 7 ing factor exists.

8 “(3) SPECIAL HEARING TO DETERMINE  
 9 WHETHER A SENTENCE OF DEATH IS JUSTIFIED.—

10 “(A) NOTICE BY THE GOVERNMENT.—

11 Whenever the Government intends to seek the  
 12 death penalty for an offense described in para-  
 13 graph (1), the attorney for the Government, a  
 14 reasonable time before the trial, or before ac-  
 15 ceptance by the court of a plea of guilty, or at  
 16 such time thereafter as the court may permit  
 17 upon a showing of good cause, shall sign and  
 18 file with the court, and serve on the defendant,  
 19 a notice—

20 “(i) that the Government in the event  
 21 of conviction will seek the sentence of  
 22 death; and

23 “(ii) setting forth the aggravating fac-  
 24 tor or factors enumerated in paragraph (2)  
 25 and any other aggravating factor not spe-

1           cifically enumerated in paragraph (2), that  
2           the Government, if the defendant is con-  
3           victed, will seek to prove as the basis for  
4           the death penalty.

5           The court may permit the attorney for the Gov-  
6           ernment to amend the notice upon a showing of  
7           good cause.

8           “(B) HEARING BEFORE A COURT OR  
9           JURY.—When the attorney for the Government  
10          has filed a notice as required under subpara-  
11          graph (A) and the defendant is found guilty of  
12          an offense described in paragraph (1), the  
13          judge who presided at the trial or before whom  
14          the guilty plea was entered, or another judge if  
15          that judge is unavailable, shall conduct a sepa-  
16          rate sentencing hearing to determine the pun-  
17          ishment to be imposed. Before such a hearing,  
18          no presentence report shall be prepared by the  
19          United States Probation Service, notwithstand-  
20          ing the Federal Rules of Criminal Procedure.  
21          The hearing shall be conducted—

22                 “(i) before the jury that determined  
23                 the defendant’s guilt;

24                 “(ii) before a jury impaneled for the  
25                 purpose of the hearing if—

1 “(I) the defendant was convicted  
2 upon a plea of guilty;

3 “(II) the defendant was convicted  
4 after a trial before the court sitting  
5 without a jury;

6 “(III) the jury that determined  
7 the defendant’s guilt was discharged  
8 for good cause; or

9 “(IV) after initial imposition of a  
10 sentence under this paragraph, recon-  
11 sideration of the sentence under the  
12 section is necessary; or

13 “(iii) before the court alone, upon mo-  
14 tion of the defendant and with the ap-  
15 proval of the attorney for the Government.

16 A jury impaneled pursuant to clause (ii) shall  
17 consist of 12 members, unless, at any time be-  
18 fore the conclusion of the hearing, the parties  
19 stipulate, with the approval of the court, that it  
20 shall consist of a lesser number.

21 “(C) PROOF OF MITIGATING AND AGGRA-  
22 VATING FACTORS.—At the hearing, information  
23 may be presented as to—

1           “(i) any matter relating to any miti-  
2           gating factor listed in paragraph (2) and  
3           any other mitigating factor; and

4           “(ii) any matter relating to any ag-  
5           gravating factor listed in paragraph (2) for  
6           which notice has been provided under sub-  
7           paragraph (A)(ii) and (if information is  
8           presented relating to such a listed factor)  
9           any other aggravating factor for which no-  
10          tice has been so provided.

11       Information presented may include the trial  
12       transcript and exhibits. Any other information  
13       relevant to such mitigating or aggravating fac-  
14       tors may be presented by either the government  
15       or the defendant, regardless of its admissibility  
16       under the rules governing admission of evidence  
17       at criminal trials, except that information may  
18       be excluded if its probative value is outweighed  
19       by the danger of creating unfair prejudice, con-  
20       fusing the issues, or misleading the jury. The  
21       attorney for the Government and for the de-  
22       fendant shall be permitted to rebut any infor-  
23       mation received at the hearing, and shall be  
24       given fair opportunity to present argument as  
25       to the adequacy of the information to establish

1 the existence of any aggravating or mitigating  
2 factor, and as to the appropriateness in that  
3 case of imposing a sentence of death. The attor-  
4 ney for the Government shall open the argu-  
5 ment. The defendant shall be permitted to  
6 reply. The Government shall then be permitted  
7 to reply in rebuttal. The burden of establishing  
8 the existence of an aggravating factor is on the  
9 Government, and is not satisfied unless the ex-  
10 istence of such a factor is established beyond a  
11 reasonable doubt. The burden of establishing  
12 the existence of any mitigating factor is on the  
13 defendant, and is not satisfied unless the exist-  
14 ence of such a factor is established by a prepon-  
15 derance of the evidence.

16 “(D) RETURN OF SPECIAL FINDINGS.—

17 The jury, or if there is no jury, the court, shall  
18 consider all the information received during the  
19 hearing. It shall return special findings identify-  
20 ing any aggravating factor or factors set forth  
21 in paragraph (2) of this title found to exist and  
22 any other aggravating factor for which notice  
23 has been provided under subparagraph (A)  
24 found to exist. A finding with respect to a miti-  
25 gating factor may be made by one or more

1 members of the jury, and any member of the  
2 jury who finds the existence of a mitigating fac-  
3 tor may consider such factor established for  
4 purposes of this section regardless of the num-  
5 ber of jurors who concur that the factor has  
6 been established. A finding with respect to any  
7 aggravating factor must be unanimous. If no  
8 aggravating factor set forth in paragraph (2) is  
9 found to exist, the court shall impose a sentence  
10 other than death authorized by law.

11 “(E) RETURN OF A FINDING CONCERNING  
12 A SENTENCE OF DEATH.—If an aggravating  
13 factor required to be considered under para-  
14 graph (2)(C) is found to exist the jury, or if  
15 there is no jury, the court, shall then consider  
16 whether the aggravating factor or factors found  
17 to exist outweigh any mitigating factor or fac-  
18 tors. The jury, or if there is no jury, the court,  
19 shall recommend a sentence of death if it  
20 unanimously finds at least one aggravating fac-  
21 tor and no mitigating factor or if it finds one  
22 or more aggravating factors which outweigh any  
23 mitigating factors. In any other case, it shall  
24 not recommend a sentence of death. The jury  
25 shall be instructed that it must avoid any influ-



1           ence of sympathy, sentiment, passion, prejudice,  
2           or other arbitrary factors in its decision, and  
3           should make such a recommendation as the in-  
4           formation warrants.

5           “(F) SPECIAL PRECAUTION TO ASSURE  
6           AGAINST DISCRIMINATION.—In a hearing held  
7           before a jury, the court, before the return of a  
8           finding under subparagraph (E), shall instruct  
9           the jury that, in considering whether a sentence  
10          of death is justified, it shall not consider the  
11          race, color, religious beliefs, national origin, or  
12          sex of the defendant or of any victim and that  
13          the jury is not to recommend a sentence of  
14          death unless it has concluded that it would rec-  
15          ommend a sentence of death for the crime in  
16          question no matter what the race, color, reli-  
17          gious beliefs, national origin, or sex of the de-  
18          fendant or of any victim may be. The jury,  
19          upon return of a finding under subparagraph  
20          (E), shall also return to the court a certificate,  
21          signed by each juror, that consideration of the  
22          race, color, religious beliefs, national origin, or  
23          sex of the defendant or any victim was not in-  
24          volved in reaching the juror’s individual deci-  
25          sion and that the individual juror would have

1           made the same recommendation regarding a  
2           sentence for the crime in question no matter  
3           what the race, color, religious beliefs, national  
4           origin, or sex of the defendant or any victim  
5           may be.

6           “(4) IMPOSITION OF A SENTENCE OF DEATH.—  
7           Upon the recommendation under paragraph (3)(E)  
8           that a sentence of death be imposed, the court shall  
9           sentence the defendant to death. Otherwise the court  
10          shall impose a sentence, other than death, author-  
11          ized by law. Notwithstanding any other provision of  
12          law, if the maximum term of imprisonment for the  
13          offense is life imprisonment, the court may impose  
14          a sentence of life imprisonment without the possibil-  
15          ity of release or furlough.

16          (5) REVIEW OF A SENTENCE OF DEATH.—

17                 “(A) APPEAL.—In a case in which a sen-  
18                 tence of death is imposed, the sentence shall be  
19                 subject to review by the court of appeals upon  
20                 appeal by the defendant. Notice of appeal of the  
21                 sentence must be filed within the time specified  
22                 for the filing of a notice of appeal of the judg-  
23                 ment of conviction. An appeal of the sentence  
24                 under this paragraph may be consolidated with

1 an appeal of the judgment of conviction and  
2 shall have priority over all other cases.

3 “(B) REVIEW.—The court of appeals shall  
4 review the entire record in the case, including—

5 “(i) the evidence submitted during the  
6 trial;

7 “(ii) the information submitted during  
8 the sentencing hearing;

9 “(iii) the procedures employed in the  
10 sentencing hearing; and

11 “(iv) the special findings returned  
12 under paragraph (3)(D).

13 “(C) DECISION AND DISPOSITION.—

14 “(i) If the court of appeals determines  
15 that—

16 “(I) the sentence of death was  
17 not imposed under the influence of  
18 passion, prejudice, or any other arbitrary factor; and

19 “(II) the evidence and information support the special findings of  
20 the existence of an aggravating factor  
21 or factors;

22 it shall affirm the sentence.  
23  
24

1           “(ii) In any other case, the court of  
2           appeals shall remand the case for reconsid-  
3           eration under paragraph (3) of this title or  
4           for imposition of another authorized sen-  
5           tence as appropriate.

6           “(iii) The court of appeals shall state  
7           in writing the reasons for its disposition of  
8           an appeal of sentence of death under this  
9           paragraph.

10          “(6) IMPLEMENTATION OF A SENTENCE OF  
11          DEATH.—

12               “(A) IN GENERAL.—A person who has  
13               been sentenced to death pursuant to this sub-  
14               section shall be committed to the custody of the  
15               Attorney General until exhaustion of the proce-  
16               dures for appeal of the judgment of conviction  
17               and for review of the sentence. When the sen-  
18               tence is to be implemented, the Attorney Gen-  
19               eral shall release the person sentenced to death  
20               to the custody of a United States marshal, who  
21               shall supervise implementation of the sentence  
22               in the manner prescribed by the law of the  
23               State in which the sentence is imposed. If the  
24               law of such State does not provide for imple-  
25               mentation of a sentence of death, the court

1 shall designate another State, the law of which  
2 does so provide, and the sentence shall be im-  
3 plemented in the manner prescribed by such  
4 law.

5 “(B) IMPAIRED MENTAL CAPACITY, AGE,  
6 OR PREGNANCY.—A sentence of death shall not  
7 be carried out upon a person who is under 18  
8 years of age at the time the crime was commit-  
9 ted. A sentence of death shall not be carried out  
10 upon a person who is mentally retarded. A sen-  
11 tence of death shall not be carried out upon a  
12 person who, as a result of mental disability—

13 “(i) cannot understand the nature of  
14 the pending proceedings, what such person  
15 was tried for, the reason for the punish-  
16 ment, or the nature of the punishment; or

17 “(ii) lacks the capacity to recognize or  
18 understand facts which would make the  
19 punishment unjust or unlawful or lacks the  
20 ability to convey such information to coun-  
21 sel or to the court.

22 A sentence of death shall not be carried out  
23 upon a woman while she is pregnant.

24 “(C) EMPLOYEES MAY DECLINE TO PAR-  
25 TICIPATE.—No employee of any State depart-

1           ment of corrections or the Federal Bureau of  
2           Prisons and no employee providing services to  
3           that department or bureau under contract shall  
4           be required, as a condition of that employment  
5           or contractual obligation, to be in attendance at  
6           or to participate in any execution carried out  
7           under this paragraph, if such participation is  
8           contrary to the moral or religious convictions of  
9           the employee. For purposes of this subpara-  
10          graph, the term ‘participate in any execution’  
11          includes personal preparation of the condemned  
12          individual and the apparatus used for the exe-  
13          cution, and supervision of the activities of other  
14          personnel in carrying out such activities.

15          “(7) USE OF STATE FACILITIES.—A United  
16          States marshal charged with supervising the imple-  
17          mentation of a sentence of death may use appro-  
18          priate State or local facilities for the purpose, may  
19          use the services of an appropriate State or local offi-  
20          cial or of a person such as an official employed for  
21          the purpose, and shall pay the costs thereof in an  
22          amount approved by the Attorney General.

23          “(8) APPOINTMENT OF COUNSEL.—

24          “(A) FEDERAL CAPITAL CASES.—

1           “(i) REPRESENTATION OF INDIGENT  
2 DEFENDANTS.—Notwithstanding any other  
3 provision of law, this subparagraph shall  
4 govern the appointment of counsel for any  
5 defendant against whom a sentence of  
6 death is sought, or on whom a sentence of  
7 death has been imposed, for an offense  
8 against the United States, where the de-  
9 fendant is or becomes financially unable to  
10 obtain adequate representation. Such a de-  
11 fendant shall be entitled to appointment of  
12 counsel from the commencement of trial  
13 proceedings until one of the conditions  
14 specified in paragraph (9)(B) has occurred.

15           “(ii) REPRESENTATION BEFORE FI-  
16 NALITY OF JUDGMENT.—A defendant  
17 within the scope of this subparagraph shall  
18 have counsel appointed for trial representa-  
19 tion as provided in section 3005 of this  
20 title. At least one counsel so appointed  
21 shall continue to represent the defendant  
22 until the conclusion of direct review of the  
23 judgment, unless replaced by the court  
24 with other qualified counsel.

1           “(iii) REPRESENTATION AFTER FI-  
2           NALITY OF JUDGMENT.—When a judgment  
3           imposing a sentence of death has become  
4           final through affirmance by the Supreme  
5           Court on direct review, denial of certiorari  
6           by the Supreme Court on direct review, or  
7           expiration of the time for seeking direct re-  
8           view in the court of appeals or the Su-  
9           preme Court, the Government shall  
10          promptly notify the district court that im-  
11          posed the sentence. Within 10 days of re-  
12          ceipt of such notice, the district court shall  
13          proceed to make a determination whether  
14          the defendant is eligible under this sub-  
15          paragraph for appointment of counsel for  
16          subsequent proceedings. On the basis of  
17          the determination, the court shall issue an  
18          order (I) appointing one or more counsel  
19          to represent the defendant upon a finding  
20          that the defendant is financially unable to  
21          obtain adequate representation and wishes  
22          to have counsel appointed or is unable  
23          competently to decide whether to accept or  
24          reject appointment of counsel; (II) finding,  
25          after a hearing if necessary, that the de-



1            defendant rejected appointment of counsel  
2            and made the decision with an understand-  
3            ing of its legal consequences; or (III) deny-  
4            ing the appointment of counsel upon a  
5            finding that the defendant is financially  
6            able to obtain adequate representation.  
7            Counsel appointed pursuant to this clause  
8            shall be different from the counsel who  
9            represented the defendant at trial and on  
10          direct review unless the defendant and  
11          counsel request a continuation or renewal  
12          of the earlier representation.

13            “(iv) STANDARDS FOR COMPETENCE  
14          OF COUNSEL.—In relation to a defendant  
15          who is entitled to appointment of counsel  
16          under this subparagraph, at least one  
17          counsel appointed for trial representation  
18          must have been admitted to the bar for at  
19          least 5 years and have at least 3 years of  
20          experience in the trial of felony cases in  
21          the Federal district courts. If new counsel  
22          is appointed after judgment, at least one  
23          counsel so appointed must have been ad-  
24          mitted to the bar for at least 5 years and  
25          have at least 3 years of experience in the

1 litigation of felony cases in the Federal  
2 courts of appeals or the Supreme Court.  
3 The court, for good cause, may appoint  
4 counsel who does not meet these stand-  
5 ards, but whose background, knowledge, or  
6 experience would otherwise enable him or  
7 her to properly represent the defendant,  
8 with due consideration of the seriousness  
9 of the penalty and the nature of the litiga-  
10 tion.

11 “(v) APPLICABILITY OF CRIMINAL  
12 JUSTICE ACT.—Except as otherwise pro-  
13 vided in this subparagraph, the provisions  
14 of section 3006A of this title shall apply to  
15 appointments under this subparagraph.

16 “(vi) CLAIMS OF INEFFECTIVENESS  
17 OF COUNSEL.—The ineffectiveness or in-  
18 competence of counsel during proceedings  
19 on a motion under section 2255 of title 28,  
20 United States Code, in a capital case shall  
21 not be a ground for relief from the judg-  
22 ment or sentence in any proceeding. This  
23 limitation shall not preclude the appoint-  
24 ment of different counsel at any stage of  
25 the proceedings.

1           “(B) STATE CAPITAL CASES.—The laws of  
2           the United States shall not be construed to im-  
3           pose any requirement with respect to the ap-  
4           pointment of counsel in any proceeding in a  
5           State court or other State proceeding in a cap-  
6           ital case, other than any requirement imposed  
7           by the Constitution of the United States. In a  
8           proceeding under section 2254 of title 28, Unit-  
9           ed States Code, relating to a State capital case,  
10          or any subsequent proceeding on review, ap-  
11          pointment of counsel for a petitioner who is or  
12          becomes financially unable to afford counsel  
13          shall be in the discretion of the court, except as  
14          provided by a rule promulgated by the Supreme  
15          Court pursuant to statutory authority. Such ap-  
16          pointment of counsel shall be governed by the  
17          provisions of section 3006A of this title.

18          “(9) COLLATERAL ATTACK ON JUDGMENT IM-  
19          POSING SENTENCE OF DEATH.—

20               “(A) TIME FOR MAKING SECTION 2255 MO-  
21               TION.—In a case in which a sentence of death  
22               has been imposed, and the judgment has be-  
23               come final as described in paragraph (8)(A)(ii),  
24               a motion in the case under section 2255 of title  
25               28, United States Code, must be filed within 90

1 days of the issuance of the order relating to ap-  
2 pointment of counsel under paragraph  
3 (8)(A)(iii). The court in which the motion is  
4 filed, for good cause shown, may extend the  
5 time for filing for a period not exceeding 60  
6 days. A motion described in this paragraph  
7 shall have priority over all noncapital matters in  
8 the district court, and in the court of appeals  
9 on review of the district court's decision.

10 “(B) STAY OF EXECUTION.—The execution  
11 of a sentence of death shall be stayed in the  
12 course of direct review of the judgment and  
13 during the litigation of an initial motion in the  
14 case under section 2255 of title 28, United  
15 States Code. The stay shall run continuously  
16 following imposition of the sentence and shall  
17 expire if—

18 “(i) the defendant fails to file a mo-  
19 tion under section 2255 of title 28, United  
20 States Code, within the time specified in  
21 subparagraph (A), or fails to make a time-  
22 ly application for court of appeals review  
23 following the denial of such a motion by a  
24 district court;

1           “(ii) upon completion of district court  
2           and court of appeals review under section  
3           2255 of title 28, United States Code, the  
4           motion under that section is denied and (I)  
5           the time for filing a petition for certiorari  
6           has expired and no petition has been filed;  
7           (II) a timely petition for certiorari was  
8           filed and the Supreme Court denied the pe-  
9           tition; or (III) a timely petition for certio-  
10          rari was filed and upon consideration of  
11          the case, the Supreme Court disposed of it  
12          in a manner that left the capital sentence  
13          undisturbed; or

14          “(iii) before a district court, in the  
15          presence of counsel and after having been  
16          advised of the consequences of his decision,  
17          the defendant waives the right to file a mo-  
18          tion under section 2255 of title 28, United  
19          States Code.

20          “(C) FINALITY OF THE DECISION ON RE-  
21          VIEW.—If one of the conditions specified in sub-  
22          paragraph (B) has occurred, no court thereafter  
23          shall have the authority to enter a stay of exe-  
24          cution or grant relief in the case unless—

1 “(i) the basis for the stay and request  
 2 for relief is a claim not presented in earlier  
 3 proceedings;

4 “(ii) the failure to raise the claim is  
 5 (I) the result of governmental action in  
 6 violation of the Constitution or laws of the  
 7 United States; (II) the result of the Su-  
 8 preme Court recognition of a new Federal  
 9 right that is retroactively applicable; or  
 10 (III) based on a factual predicate that  
 11 could not have been discovered through the  
 12 exercise of reasonable diligence in time to  
 13 present the claim in earlier proceedings;  
 14 and

15 “(iii) the facts underlying the claim  
 16 would be sufficient, if proven, to under-  
 17 mine the court’s confidence in the deter-  
 18 mination of guilt on the offense or offenses  
 19 for which the death penalty was imposed.”.

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